

REMARKS

I. Introduction.

Claims 1-16 are pending and stand rejected. An objection was made with respect to Claim 10. Claims 1-16 were rejected under 35 U.S.C. Section 103(a).

II. Claim Objections.

Claim 10 has been amended as requested to correct its dependency.

The numbering of Claims 11 (second occurrence) to 15 have been corrected, and the dependencies of renumbered Claims 12-13 have been corrected.

III. Rejections Under 35 U.S.C. § 103

Claims 1-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,403,548, Aibe, et al. in view of U.S. Patent 5,772,959, Bermas.

A. With Respect to Claims 1, 9, 11, and 16.

The Office Action states that with respect to Claims 1, 9, 11, and 16, a number of items are taught by the Aibe, et al. reference. The Office Action acknowledges, however, that the Aibe, et al. reference fails to disclose the use of sodium bicarbonate; and with respect to Claim 16, the Aibe, et al. reference fails to disclose the use of interchangeable passive filter members with respect to the device. However, the Office Action states that the Bermas reference teaches that combining activated carbon and sodium bicarbonate is well known in the art of deodorizing refrigerators. The Office Action goes on to state that the Bermas reference "discloses the use of independent identical passive members (figure 1, 10) inside the refrigerators." (Office Action, section 5, second paragraph). The Office Action concludes that it would have been obvious to utilize the teachings of Bermas and Aibe, et al. in order to maximize the rate of deodorization inside refrigerators by combining passive and active deodorizers.

Applicants respectfully request that this rejection be reconsidered and withdrawn. Contrary to the statement in the Office Action that the Bermas reference "discloses the use of independent identical passive members (figure 1, 10) inside the refrigerators", the Applicants do not find any teaching or disclosure in the Bermas reference that more than one passive member is intended to be used. Figure 1 of the Bermas reference only shows a

single refrigerator freshening device and several food items. It does not show more than one of the refrigerator freshening devices, nor is there any discussion in the detailed description of the Bermas reference of using more than one of the refrigerator freshening devices at a time. If this rejection is not withdrawn, the Applicants respectfully request that the Examiner cite in the next Office Action, the page and line number within the Bermas reference that supports the position that the Bermas reference discloses the use of independent identical passive members inside a refrigerator.

The Examiner's attention is also respectfully directed to the recent case *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). In that case, the Federal Circuit, once again, cited numerous cases for the principle that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g., *C. R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998); *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992); *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 297, 227 USPQ 657, 667 (Fed. Cir. 1985) and *Graham*, 383 U.S. at 18, 148 USPQ at 467. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

There is no teaching or disclosure in the Bermas and Aibe, et al. references of the desirability of combining passive and active deodorizers in order to maximize the rate of deodorization inside refrigerators as suggested in the Office Action.

The Bermas reference only teaches the use of a single passive refrigerator freshening device that is preferably suspended from hooks attached to one of the shelves of the refrigerator. It does not teach or disclose the use of more than one device, nor does it teach or disclose the use of more than one type of device. The Bermas reference also does not teach or disclose the use of sodium bicarbonate in the device described therein. The Bermas reference does state that sodium bicarbonate has been used to control odors in refrigerators, but only teaches using a mixture of activated carbon and zeolite.

The Aibe, et al. reference does not teach or disclose the use of sodium bicarbonate in the device described therein. The Aibe, et al. references only teaches a device having an alkali metal iodide and phosphoric acid supported on an activated carbon honeycomb structure.

Since the references do not contain any teaching or disclosure of the claimed elements, or the desirability of combining the references in a manner that will result in the claimed invention, the Office Action does not set forth a *prima facie* case of obviousness.

B. With Respect to Claims 2-5.

Claims 2-5 are either directly or indirectly dependent from Claim 1, and for the reasons set forth above, are nonobvious over the Aibe, et al. reference.

Further, with respect to Claim 5, neither reference discloses the use of sodium bicarbonate in a filter member that is sufficiently pervious to air so that said fan can convey air through said filter member. They disclose the use of other materials, namely activated carbon, in a form through which air can pass. While it is acknowledged that sodium bicarbonate has been used for deodorizing refrigerators, it is usually provided in a dense powder form which does not permit the passage of air therethrough. The references do not add a teaching that addresses this deficiency in the prior art uses of sodium bicarbonate.

C. With Respect to Claims 6-7.

The Office Action states that Bermas teaches a "filter element (figure 2, 10) includes a container (figure 2, 40) with at least two air pervious sides (figure 4, 40 has two unlabeled sides), which contains sodium bicarbonate (col. 1, line 51), the container is a bag (col. 4, lines 51-52) made of air pervious material with sodium bicarbonate therein, * * *." The Applicants strongly disagree with this statement. As noted above, the Bermas reference does not teach or disclose the use of sodium bicarbonate in the device described therein, rather the Bermas only teaches using a mixture of activated carbon and zeolite in its device. Nowhere in the Bermas reference is it taught that the Bermas device can contain sodium bicarbonate.

Further, Claims 6-7 are either directly or indirectly dependent from Claim 1, and for the reasons set forth above, are nonobvious over the Bermas reference.

D. With Respect to Claims 10 and 12.

With respect to Claims 10 and 12, nowhere in the Aibe, et al. reference is it taught that the Aibe, et al. device can contain sodium bicarbonate.

E. With Respect to Claims 13-15 (Renumbered Claims 14-16).

The Office Action states that with respect to Claims 13-15, Aibe, et al. discloses that the device can be used in a refrigerator which "intrinsically includes compartments separate from the remainder of the confined space. The Office Action acknowledges that Aibe, et al. fails to disclose the use of sodium bicarbonate and the use of interchangeable passive filter members. The Office Action states that Bermas teaches the use of a passive filter member which includes sodium bicarbonate to deodorize a refrigerator. The Office Action concludes that it would have been obvious to utilize the teachings of Bermas and Aibe, et al. in order to optimize the rate of deodorization of air inside refrigerators by combining passive and active deodorizers.

While the Applicants agree with the Examiner's statement that refrigerators include compartments, the Applicants respectfully disagree with the conclusion in the Office Action that it would have been obvious to utilize the teachings of Bermas and Aibe, et al. in order to optimize the rate of deodorization of air inside refrigerators by combining passive and active deodorizers. The Applicants initially note that Claims 13-15 do not state that passive and active deodorizers are being combined to optimize the rate of air deodorization.

The Applicants also respectfully disagree with the conclusion in the Office Action. Neither of the references individually, or in combination, teach or disclose: using more than one deodorizing device; the desirability of placing a deodorizing device in a compartment of a confined space such as a refrigerator; or, the desirability of using two different types of devices, one of which comprises an air moving member and one of which comprises a passive filter member. Since the references do not contain any teaching or disclosure of the claimed elements, or the desirability of combining the references in a manner that will result in the claimed invention, the Office Action does not set forth a *prima facie* case of obviousness.


In addition, with respect to Claims 13 and 14 (renumbered Claims 14 and 15), neither of the references individually, or in combination, teach or disclose a method wherein both a first filter member and a second filter member can be used interchangeably in association with an air moving member.

Further, with respect to Claim 15 (renumbered Claim 16), neither of the references individually, or in combination, teach or disclose a device for emitting one or more substances into the atmosphere.

IV. Summary.

In view of the foregoing, reconsideration of the rejections and allowance of all claims is respectfully requested.

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

4. (Amended) The air deodorizing device of Claim 3 wherein said air moving member comprises a housing that has a top portion with an air inlet therein, and said filter cartridge sits on the top portion of the housing of said air moving member so that the one or more air outlets on the bottom portion of said cartridge at least partially in alignment with the air inlet on said air moving member.
10. (Amended) A method for deodorizing air in a confined space according to Claim [10] 9 wherein said confined space is inside a refrigerator.
- [11]12. (Amended) The method for deodorizing air in confined spaces according to Claim [10] 11 wherein said confined space is inside a refrigerator.
- [12]13. (Amended) The method for deodorizing air in confined spaces according to Claim [10] 11 wherein said confined space comprises a compartment separate from the remainder of said confined space, and said second filter member is positioned inside said compartment and said first filter member is positioned inside said remainder of said confined space.
- [13]14. (Amended) The method for deodorizing air in confined spaces of Claim [10] 11 wherein both said first filter member and said second filter member can be used interchangeably in association with said air moving member and said first filter member and said second filter member are both detachable from said air moving member.
- [14]15. (Amended) The method for deodorizing air in confined spaces according to Claim 13 wherein said second filter member comprises a filter medium that also at least partially comprises sodium bicarbonate.
- [15]16. (Amended) A device for deodorizing air and/or emitting one or more substances into the atmosphere comprising:
- a first deodorizing and/or emitting device comprising an air moving member and a first passive deodorizing and/or emitting member configured for use with said air moving member, said first passive deodorizing and/or emitting member comprising a first medium, at least a portion of which comprises a first substance that serves to deodorize the air and/or is to be emitted into the atmosphere;

a first medium, at least a portion of which comprises a first substance that serves to deodorize the air and/or is to be emitted into the atmosphere;

one or more additional deodorizing and/or emitting members comprising passive deodorizing and/or emitting members comprising a medium, at least a portion of which comprises a second substance that serves to deodorize the air and/or is to be emitted into the atmosphere,

wherein said one or more additional deodorizing and/or emitting members can be used interchangeably with said first deodorizing and/or emitting member relative to said air moving member, and at least one of said first or second substances are different.

Claims 17-19 are new.